DOCUMENT RESUME

ED 174 167 HE 011 623

TITLE Issues and Answers for Implementing Section 504.
INSTITUTION National Association of Coll. and Univ. Business Officers, Washington, D.C.
PUB DATE Jul 79
NOTE 12p.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Access to Education; *Architectural Barriers; *Civil Rights; College Housing; *Educational Facilities; Equal Education; *Federal Legislation; *Handicapped Students; Higher Education; Mainstreaming
IDENTIFIERS *Civil Rights Act 1964

ABSTRACT

Positions on 37 issues related to higher education's implementation of section 504 were developed by the National Association of College and University Business Officers (NACUBO). This project is a part of the interassociation effort (Higher Education and the Handicapped--HEATH) to provide colleges and universities with information and technical assistance on section 504. Section 504 is a civil rights law that guarantees equal opportunities for handicapped persons. The touchstone of section 504 is integration and not segregation. Separate or different treatment of handicapped persons is only permitted under section 504 when it is absolutely necessary to achieve full participation. Section 504 mandates the accessibility of programs and activities that already exist, and a full integration of handicapped persons throughout existing programs and institutional structures. The objective of the task force in developing positions on the issues was the achievement of consensus among persons representing diverse backgrounds and interests. The positions represent general consensus of the group, but not all members of the task force are in full agreement with every position. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

National Association of College and University Business Officers

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED

NACUBO

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Issues and Answers for Implementing Section 504

Section 504 is a civil rights law that guarantees equal opportunities for handicapped persons. It is based on the conviction that such individuals are able to perform effectively and successfully in all phases and at all levels of society.

Providing equal opportunities for handicapped persons may require specific action by higher education institutions, such as removing barriers or overly restrictive rules that disqualify or limit handicapped participation; but compliance with section 504 may often be achieved quite simply by permitting handicapped persons to work and to learn on the same terms as others.

The intent of section 504 is to give every individual, regardless of handicap, a chance to develop and use his or her talents and potentials to their fullest. Planning for compliance must begin with this as its premise and attention must be focused on finding approaches that maximize personal freedom and independence.

A full understanding of section 504 as a civil rights law demands a strong sense of the dignity, resourcefulness, and independence of each handicapped individual. The handicapped individual has the responsibility for his or her own life and the directions that it will take. To exercise their rights, and to exercise these personal responsibilities to their fullest, handicapped individuals must have opportunities to plan for themselves and to choose learning and career paths that are best suited for them as individuals.

While institutions of higher education must, under section 504, make accommodations and adjustments for handicapped persons, handicapped persons in turn have a clear obligation of "reasonable self-help." This principle is fundamental to section 504. It affirms that handicapped individuals will reap the benefits of their good judgment and responsible actions; conversely, this principle makes explicit that handicapped persons are expected to take equal responsibility for individual actions or personal working and learning experiences.

The members of the NACUBO task force who are handicapped took the lead in advocating the obligation of reasonable self-help. This obligation adds dignity and strength to the civil rights concept that governs section 504. Handicapped individuals on campus are likely to be equally strong advocates for their own independence and self-sufficiency. They should be fully involved in section 504 planning and compliance activities to insure that civil rights and reasonable self-obligations influence institutional decision making.

The touchstone of section 504 is integration and not segregation. While it may be tempting to undertake special efforts for handicapped students and employees, or to establish special of-

The following positions have been developed by the NACUBO Task Force on Section 504, which has been active since fall 1978 to address complex issues and questions related to higher education's implementation of section 504.

The work of the NACUBO Task Force on Section 504 was made possible by Contract No. 300-78-0288 between the American Council on Education and the Department of Health, Education, and Welfare. This project is a part of the interassociation effort — Higher Education and the Handicapped (HEATH) — to provide colleges and universities with information and technical assistance on section 504.

The process of identifying issues for this task force effort used as its departure point Guide to the Section 504 Self-Evaluation for Colleges and Universities, *the product of NACUBO's previous (1978) effort under the HEATH program. It is felt that the positions addressed by the task force are a natural complement to material presented in the NACUBO guide.*

The following positions were drafted to be consensual in nature and reflect the interests and concerns of all parties presently involved in section 504 implementation. The task force's objective from the outset was the achievement of consensus among persons representing diverse backgrounds and interests. Through the composition of the task force and the work it has performed, it is believed that this objective has been met satisfactorily.

Although the following positions do generally represent consensus among task force members, reflecting a strong sense of the group, issuance of these positions does not imply that all members of the task force are in full agreement with every position adopted by the group.

It must be emphasized that these positions have not been formally cleared as positions of the federal government. They have not been formally approved by HEW. However, they have been reviewed by and discussed in great detail with representatives of HEW's Office for Civil Rights, and there is agreement that they conform to the intent of the statute and implementing regulations. NACUBO and the American Council on Education have submitted these positions to OCR Director David S. Tatel for his agency's formal approval and endorsement.

NACUBO encourages the reprinting and dissemination of this report. The report is not copyrighted and no permission is needed prior to republication and distribution.

fices or administrative units to serve handicapped persons, separate or different treatment of handicapped persons is only permitted under section 504 when it is absolutely necessary to achieve full participation. The creation of separate or independent administrative structures devoted to handicapped issues should be avoided whenever possible, since these may lead to unnecessarily separate or different treatment of handicapped persons. There should be centralized *planning* for section 504, but institutions should avoid the temptation to over-centralize *authority* over all programs and activities.

Section 504 does not mandate the creation of new programs and activities for handicapped individuals. It mandates the accessibility of programs and activities that already exist, and a full integration of handicapped persons throughout existing programs and institutional structures. Over-centralized authority for section 504 will be detrimental to handicapped students and employees, and perhaps to the institution, to the extent that it leads to the creation of separate programs or procedures that are not required under section 504 and are not necessary to achieve equal opportunities.

Section 504 does not address the personal needs of handicapped individuals, or any personal issues related to rehabilitation or care. Rehabilitation and personal care are not institutional responsibilities under section 504; they are the responsibilities of the individual handicapped person. Civil rights and equal opportunities should be the sole, intent focus of institutions of higher education in their work related to section 504.

Section 504 encourages equal opportunity for the handicapped through common sense, negotiation among reasonable persons, and respect for one another's dignity and independence. These are the most useful tools in section 504 problem-solving. With these tools and the diverse backgrounds and interests of task force members, the NACUBO task force addressed a number of questions commonly asked by college and university administrators, section 504 coordinators, students, and representatives of the handicapped community. It has arrived at consensual positions which it is hoped will be useful.

1 Do temporary impairments (such as those resulting from football or automobile accidents — cracked ribs, broken legs) necessitate the same kind of treatment and consideration by the institution as impairments of a permanent nature?

Position. Although impairments such as cracked ribs or broken legs would appear to be covered under section 504, the task force believes that it should be permissible, due to matters related to timing and reasonableness, for the institution to exercise greater flexibility in matters related to temporary impairments of this nature.

The task force feels that HEW clarification is necessary on this issue. Institutions need guidance, for example, on differentiating between impairments that are "permanent" and "temporary." Definitions or standards in this area are needed before any institution will be able to make informed and consistent decisions. Also, since the principle of "reasonable accommodation" does not apply to students and other program participants (but only to employees), the task force feels that it would be inappropriate for students with temporary impairments such as cracked ribs and broken legs to command the full array of rights and privileges granted under section 504.

Without regard to section 504, institutions have long undertaken responsibilities to meet individual needs of students with temporary impairments. Accommodations *should* be made for persons who express a desire to return to school or work during the period of recovery from temporary disability. However, *requiring* an institution to follow the strict requirements of section 504 in such cases (and to reschedule classes or make modifications in facilities) would be inappropriate. Accessibility should be achieved in individual instances to the extent possible, and flexible approaches should be developed so that the student does not suffer unnecessarily from his or her temporary impairment.

It should be emphasized that this position does not address temporary impairments that are clearly within the section 504 definition of "handicap." It addresses solely impairments of the nature of cracked ribs and broken legs.

Southeastern v. Davis

The positions recommended by the task force in this report were prepared prior to the U.S. Supreme Court decision in *Southeastern Community College v. Davis*. In that case the court ruled that a professional school may impose a legitimate physical requirement in admissions and need not substantially modify program content to accommodate a handicapped applicant.

2 How does section 504 apply to persons whose handicaps have been artificially corrected (e.g., a hearing-impaired person who uses a hearing aid or a visually-impaired person who uses corrective lenses)?

Position. If an individual uses (or could use) a hearing aid, corrective lenses or other such aid that is (or would be) effective in making programs and activities accessible, the institution is under no obligation to provide additional auxiliary aids should that person choose not to use his or her personal aid. For example, an institution need not provide an interpreter for an individual with a hearing impairment if the individual could achieve effective hearing by using a hearing aid. However, the institution should not assume that such corrective aids will be effective for all persons or for any individual under all circumstances. A person using a hearing aid, for instance, may have no or limited speech ability, requiring the use of a *reverse* interpreter. Or due to a malfunction of the aid a temporary interpreter may be required.

The issue of whether or not a particular handicap may be corrected effectively by a personal aid is one that the institution and individual will have to resolve on a case-by-case basis. Section 504 imposes requirements upon the institution, and not the individual student or employee. However, there must be a *shared responsibility* in such circumstances and the individual has an obligation of reasonable self-help.

It should be clear that the institution has *no* obligation to provide individuals with personal aids, such as hearing aids and corrective lenses.

3 Can some clarification be provided of the term "being regarded by others as handicapped" in the definition of "handicapped" persons?

Position. This term would appear to broaden the coverage of section 504 and expand the statute's protections so that all persons, not merely "handicapped persons," are protected from discrimination based on handicap. This phrase makes discrimination on the basis of handicap prohibited whether or not the person who is discriminated against is a "handicapped person," as defined. If someone "regarded by others as handicapped" who is *not* "handicapped" is discriminated against on the basis of handicap, he or she is protected under section 504. In a sense, this phrase broadens the protected class to include everyone and prohibits the "act of discriminating," regardless of the physical or mental

condition of the subject of the discrimination.

4 Are there any guidelines that may be employed by the institution to assist with determinations regarding whether someone is having a disruptive impact on any program or activity?

Position. The same standards of action, codes of performance, and levels of disruption should apply to everyone, regardless of handicap. Institutional rules and regulations need not be altered or changed in any way as a result of section 504. Disruptive or abusive behavior, regardless of whether the perpetrator is handicapped or nonhandicapped, will have to be treated locally on a case-by-case basis.

5 What is meant by the term "significant assistance" and how does it apply to different areas of operation, such as off-campus housing, bookstores that are not owned or operated by the institution, providers of social and recreational opportunities for students, and other services and activities?

Position. The task force did not feel that it was appropriate to define this concept, which is an integral concept in the HEW regulations on which a variety of institutional actions will have to be based. Rather, it strongly urges HEW to define this term and provide specific examples of actions that it intends to be encompassed by "significant assistance."

6 To what extent should institutions develop separate programs and activities for handicapped persons?

Position. Section 504 does not require, and in fact discourages, the creation of separate programs and activities for handicapped persons. The self-evaluation process will involve an analysis of all existing programs and activities of the institution. Modifications in these programs and activities shall be made to ensure opportunities for full participation and an integration of handicapped persons in existing programs and activities to the maximum extent possible. The regulations prohibit separate programs for handicapped persons unless they are necessary to afford equal opportunity. If problems are identified in the Self-Evaluation, existing programs and activities shall be modified whenever possible, rather than new programs created with the potential for new barriers to one's ability to function in the "most integrated setting appropriate."

While it may be tempting to create new programs and take initiatives to "do something for the handicapped," the basic objective of section 504 is ensuring full participation, a matter that may frequently require little more than an open mind. "Doing more for handicapped persons" may in some instances result in doing less for handicapped persons in their desire to function in an atmosphere free from barriers to equal opportunity. Overreacting to the section 504 requirements will not work to the benefit of the institution or its handicapped students and employees.

Although centralized planning for section 504 compliance is recommended, institutions should avoid the temptation to overcentralize authority over all programs and activities, since centralized authority may lead to separate programs and activities for handicapped persons that are not required and may not be necessary. To ensure full participation by handicapped students and employees "in the most integrated setting appropriate," it is recommended that authority be decentralized and that all persons responsible for substantive programs and activities of the institution be involved in phases of the Self-Evaluation that pertain to other operations. Institutions that already have "coordinators" with broad authority should ask whether or not separate programs or activities are necessary to eliminate barriers to full participation.

It should be noted that the HEW regulations state clearly that despite the existence of permissible separate programs and activities for classes of handicapped persons, individual handicapped persons must always be afforded opportunities to participate in any programs or activities that are not separate or different.

7 Should additional information be provided to institutions regarding the relationship between the Transition Plan and Self-Evaluation required under section 504?

Position. It should be clear to all institutions that facilities considerations are secondary to program considerations under section 504. Section 504 requires that all programs and activities be accessible. It does not specifically require that any particular campus building or facility be accessible without first considering the programs and activities that will be housed within.

The Office for Civil Rights may have used somewhat faulty judgment in requiring institutions to complete a Transition Plan (analyzing all facilities for their accessibility) six months prior to the required completion of the Self-Evaluation (analyzing all programs and activities, and methods for making them accessible). Section 504, after all, is primarily concerned with program accessibility, as opposed to facility ac-

NACUBO Task Force on Section 504

Gene M. Nordby, *Chairman*
Vice President for Business and Finance
Georgia Institute of Technology

James Bennett
Director of Section 504 Technical Assistance
Department of Health, Education, and Welfare, Office for Civil Rights

Phillip Crunk
Special Assistant to the Vice President for Planning and Operations
Associate Professor of Social Work
University of Alabama

Alfred De Graff
Director of Disabled Student Services
Boston University

James Gashel
Chief, Washington Office
National Federation of the Blind

Claire Guthrie
Assistant Secretary and University Counsel
Princeton University

Clinton Hewitt
Assistant Vice President for Physical Planning
University of Minnesota

Philip S. Jastram
Professor of Physics
Ohio State University

Robert S. Menchel
Employment Opportunities Analyst
National Center on Employment of the Deaf
National Technical Institute for the Deaf
Rochester Institute of Technology

Donald R. Moore
Vice President for Student Services
Tulane University

Barbara Murphy
Program Associate for Handicapped and Veterans Affirmative Action
University of Michigan

Jeffrey H. Orleans
Special Assistant to the President
The University of North Carolina

Peggy Pinder
President, Student Division
National Federation of the Blind

Laurie Robinson
Senior Admissions Counselor
University of Michigan, Dearborn

Michele M. Thompson
Assistant Chancellor and Director of Affirmative Action
University of Illinois, Urbana

NACUBO Project Director:
G. Richard Biehl

cessibility. With this reverse order of requirements in the HEW regulations, it is feared that too much emphasis has been placed on the technical standards and specifications required to make a building accessible, and too little has been placed on program accessibility and the relationships between program access and usable space. It is feared that the tone for all section 504 activities on many campuses may have been set by the activities related to completing the Transition Plan — the first major effort required under section 504 — and that a "facilities mentality" may be permeating all section 504 activities as a result.

8 What recourse does an institution have when its state has requirements or special provisions that conflict with, or make difficult or impossible, the accomplishment of actions related to section 504? Examples of such include state legislatures that will not appropriate funds for a state school to make a reasonable accomodation; limitations in state law that discriminate against handicapped persons in insurance or benefit programs; discriminatory state or local housing provisions; or employment criteria in state civil service codes that discriminate against handicapped persons.

Position. In all such instances the institution faces complicated legal dilemmas that are outside of the capabilities of the task force to address. Institutions confronted by such conflicts have a clear obligation to themselves to, if possible, pursue courses of action that will be defensible on some rational basis. The institution should maintain documentation that clarifies that it has made the necessary budgetary requests to comply with section 504 and has clearly delineated its section 504 obligations to the higher approving authority. Such documentation and delineation, however, do not remove or mitigate the institution's obligation to comply fully with section 504. The institution should make it clear to its higher authority that failure to comply with section 504 because of necessary state action, notwithstanding attempts by the institution to secure such action, may result in the imposition of federal sanctions and loss of federal financial assistance.

Clearly, such conflicts should be addressed by competent legal counsel and determinations should be made based on the specific legal and financial environments in which the institution is functioning. Institutions should feel some obligation, for their own sake and for the benefit of their handicapped students and employees, to keep abreast of developments in their states and to inform and educate state legislatures and agencies on the principles of section 504 and their applicability to all institutions of higher education.

9 To what extent is the institution responsible for the accessibility of facilities used for off-campus events, such as museums, theaters, stadia, and so forth?

Position. The institution has an obligation to ensure that such facilities are accessible, on the whole, to the extent that they are: (1) used as a part of any program of the institution; or (2) the subject of significant assistance that the institution provides to the owner or operator of the facility. If such facilities are *not* a part of any institutional program (e.g., an art museum that *must* be visited as a part of an art appreciation course) or significant assistance is *not* extended to the owner or operator (e.g., allowing free advertising in the campus publications), then the institution has no obligation with regard to their accessibility.

In selecting such facilities for use in programs of the institution, the institution should select, whenever possible, those that are accessible or receive federal financial assistance of their own and have independent accessibility obligations.

10 What is the proper role of assistants, employed by the institution, in making certain services available to handicapped persons in unique institutional settings (e.g., food service facilities, libraries, bookstores)?

Position. The institution has an obligation to maximize access within such facilities to the extent possible. It is recognized, however, that cafeteria lines, library and bookstore stacks, and other similar facilities may be difficult if not impossible to make fully accessible to and usable by all handicapped persons through structural changes alone.

In such cases, the institution may employ assistants who will perform tasks for individual handicapped persons who *express a desire and a need* for individual assistance of a non-personal nature. Such tasks may include providing meal services, obtaining books or materials in a library or reading room, or gathering books, materials or supplies in a bookstore or similar facility.

It should be noted that the delivery of services in such a manner must be "effective," and that proper notice and training will be required.

The institution should avoid generalizations based on handicap in such instances. Individual assistance should be provided on an individual-by-individual basis to persons who express a desire and a need for such.

11 If an institution leases facilities that are not accessible, should it break the lease and move to an accessible location, since section 504 prohibits the use of inaccessible facilities in cases where programs and activities are inaccessible as a result?

Position. First, institutions are not advised to break leases, since federal law does not give anyone the right to break a lease. Second, leasing inaccessible facilities is permissible under section 504 *so long as no programs or activities are inaccessible as a result.*

If inaccessible leased space must be accessible in order for all programs and activities to be accessible, the institution should work with the landlord to have the space made accessible or should sublease the space for the duration of the lease.

Obviously, institutions should refrain from leasing inaccessible facilities in the future unless such facility inaccessibility will have no affect on program accessibility.

12 Will programs be considered to be accessible if handicapped persons are required to use routes to classrooms, working areas, and so forth that are not as direct as those used by nonhandicapped persons (such as freight elevators, side doors, having to leave a building and re-enter in order to get from one floor to another)?

Position. Alternate routes (that are perhaps less direct) are permissible under section 504 so long as significant violations of the "most integrated setting appropriate" principle do not exist *and* institutions make their alternate routes "regular pedestrian passages" that may be used by all students and employees, not merely handicapped persons. A significant violation of the most integrated setting appropriate principle would be, for example, requiring someone to leave a facility in order to get from a weight room in an athletic facility to a locker/shower area. Complications arise in cases where grave security risks or danger would be created by making an alternate route a "regular pedestrian passage." In such instances, institutions are permitted to take building security and/or danger into consideration, but are urged to adopt approaches that will maximize regular and convenient access. The size of the

facility, its use(s), and the nature and degree of the risks involved are among the factors to be taken into consideration.

13 What institutional obligations exist regarding the accessibility of bookstores and the provision of required books and materials to handicapped students?

Position. The institution has no obligation to provide handicapped students with books or materials required as a part of any academic program, unless it provides books and materials to all students. Obtaining such books and materials is considered to be a "personal" act that falls within the responsibility of the individual student.

With regard to the accessibility of bookstores and similar facilities:

- Such facilities owned or operated by the institution must be accessible, although assistants may be provided to overcome physical obstacles (such as turnstiles and book stacks) that cannot be removed;
- Such facilities that are not owned and/or operated by the institution, but which receive "significant assistance" from the institution, must be accessible "on the whole," and the same flexibility regarding assistants exists as in the paragraph above; and
- Such facilities that are not owned and/or operated by the institution, and do *not* receive significant assistance from the institution, need not be accessible. However, when such stores are the only source of books and supplies for students, the institution should encourage such stores to achieve accessibility for handicapped persons.

In the opinion of the task force, "significant assistance" is *not* extended to bookstores if the only institutional contact with such stores is the provision of reading lists by faculty members or others.

14 Does the institution have any special obligations for persons with mobility impairments with regard to snow and ice removal?

Position. If the institution removes snow and ice, it should make special efforts to make certain that passageways used by persons with mobility impairments are clear. However, the task force feels strongly that institutions cannot assume complete responsibility for overcoming effectively and in a timely manner all acts of God. Institutions should "do the best they can" in such instances, and should make certain that handicapped students are not penalized or discriminated against for failure to attend classes or other programs when snow or ice prohibits effective transit. The institution should be aware of any special services that individual handicapped persons may require in the event of immobility due to snow or ice.

15 With regard to construction and renovation of facilities, what factors need to be taken into account in addition to technical standards and specifications?

Position. All new construction and the alteration of facilities must be performed according to standards (American National Standards Institute or its equivalent) that will ensure that facilities are readily accessible to and usable by handicapped persons. More importantly, however, persons responsible for programs and activities that will be housed in a particular facility should work closely from the outset with architects and others responsible for design. Institutions should be aware of differences that may exist between a physically accessible environment, based on technical specifications and measurements, and an environment that allows for complete program accessibility and a practical relation among units of related, usable space.

16 What additional guidance with regard to program accessibility may be offered to institutions with historical buildings that may require some or extensive modification before all programs and activities will be accesible?

Position. The task force is not qualified to provide technical assistance on this question, and consequently defers to organizations such as the Association of Physical Plant Administrators of Universities and Colleges (Eleven Dupont Circle, Suite 250, Washington, D.C. 20036) and the National Trust for Historic Preservation (740 Jackson Place N.W., Washington, D.C. 20006) on questions related to achieving accessibility in historical buildings.

17 If an institution *moves* to *new* facilities — constructed since the June 3, 1977 effective date of section 504 requirements for new construction — that are not completely accessible in conformance with ANSI standards, what are the institution's obligations regarding accessibility of these facilities?

Position. The institution would have no obligations regarding the total accessibility of these new facilities, *so long as* they were not "constructed by, on behalf of, or for the use of" the institution. The principle would pertain regardless of whether the institution purchased or leased the facility or used it through some other arrangement. As with all facilities used by the institution, however, *physical inaccessibility may not compromise program accessibility*. Despite the use of these and other inaccessible (or partially inaccessible) facilities, all programs and activities of the institution must still be accessible.

Section 504 requirements that would pertain to such facilities are those for "Existing Facilities" located at section 84.22. Requirements contained in section 84.23, "New Construction," would not be applicable.

It must be emphasized that this Position (and the question to which it is a response) deals *solely* with facilities constructed since June 3, 1977 that were *not* constructed by, on behalf of, or for the use of the institution.

18 Is the institution required to provide aids, services, and accommodations, as required by the regulations, to part-time students and others who are not enrolled in a degree program of the institution?

Position. Yes.

19 Does section 504 contain any *preference* in admissions or employment with regard to admitting or hiring handicapped persons?

Position. Section 504 clearly contains no preference, and institutions are not obliged to accord any preference based on handicap in admissions or employment recruitment. This general statement would not apply, however, in individual cases where institutions were taking voluntary or remedial action under section 504. Also, institutions should be aware of affirmative action requirements under section 503 that may be interpreted to require preferential treatment based on handicap for employees and applicants for employment.

20 Does section 504 cover foreign students in the same manner as U.S. students?

Position. Section 504 and its implementing regulations do not exclude foreign students from coverage, since the statute applies to "no otherwise qualified handicapped person in the United States." It is therefore clear that all students in attendance at a college or university, regardless of whether

they are foreign or U.S. citizens, are entitled to programs, activities and services that are accessible.

The task force, however, urges HEW to clarify the extent to which section 84.42, "Admissions and Recruitment," applies to different groups or classes of noncitizens. It is clear that all other sections of the regulations apply fully to students who are noncitizens. The extent to which section 84.42 applies, however, needs additional clarification.

Institutions should be aware of certain problems that may arise in the case of foreign students who are not fluent in English and also require auxiliary aids. Unless the institution provides all of its students (or all of its foreign students) with services designed to overcome deficient English skills, the institution is under no obligation to provide foreign handicapped students with such services. Auxiliary aids provided by an institution (e.g., readers, interpreters) need not be remedial in nature. Institutions may apply the same English language requirements to foreign handicapped students as it applies to all of its foreign students, and need not make auxiliary aids available to an excessive degree in order to overcome deficient English language skills.

21 To what extent does the institution's obligation in the recruitment area pertain to voluntary recruitment efforts conducted without much if any institutional supervision or coordination?

Position. To the extent possible the institution should regularly inform alumni(ae) and others involved in informal, volunteer recruitment efforts of the institution's obligations under section 504. The more organized the recruitment effort, and the more formal the institution's participation and communications with outside recruiting groups, the greater the institutional obligation becomes. In this regard, the institution may wish to prepare a brochure or statement for dissemination to alumni(ae) and others who serve as recruiters or interviewers for the institution.

22 What clarification may be provided regarding the institution's rights to make preadmission and postadmission inquiries related to handicap, and to request medical information from persons with handicaps?

Position. *Preadmission Inquiries:* Institutions may not ask applicants for admission questions related to the nature and extent of handicap unless they are taking *remedial* or *voluntary* action under section 504. However, it is permissible to include a statement in application materials that, without requesting such information, gives applicants the opportunity to provide such information to the institution on a *voluntary* and *confidential* basis. Such statements should emphasize that the information will be kept strictly confidential, if provided, and will not be used to discriminate on the basis of handicap in any way. It should be emphasized that the information would be helpful to the institution in planning and making accommodations and adjustments in a timely manner for those incoming students who will require such. Including such statements in application materials may be particularly important for institutions that operate open admissions programs, and consequently may have little time to make accommodations and adjustments between the application process and the beginning of classes.

The following is an example of a statement that may be used, or adapted for use, for these purposes:

> Federal law prohibits *(name of institution)* from making inquiries regarding handicap prior to admission. Information regarding handicaps, voluntarily given or inadvertently received, will *not* affect any admissions decision. However, if you would, upon admission and acceptance, require special services because of handicap, you may notify *(name of person or office)*. This *voluntary* self-identification allows *(name of institution)* to prepare for the effective delivery of all programs, activities, and services to handicapped persons. If provided, this information will be kept in strict confidence and will have no effect on your admission to *(name of institution)*.

Preadmission Information: Institutions must make certain that no discrimination based on handicap occurs when information is received prior to admission that identifies someone as being handicapped. Such information may be inadvertently acquired in resumes, letters of recommendation, interviews, or from national testing services.

In the case of national testing, wherein institutions often receive for handicapped persons test scores that are not validated or ineffective as admissions criteria, institutions are obliged to find effective alternatives by which individual skills, aptitudes and competencies may be judged. Handicapped persons may not be discriminated against because of national testing scores that are not valid, or because of the absence of such scores.

The task force emphasizes that the inadvertent receipt of information concerning an applicant's handicap, whether from the applicant, a reference, or a testing service, does not provide a basis for inferring that admissions decisions have been discriminatory.

Postadmission Inquiries: Institutions may, after admission, make inquiries on a confidential and nondiscriminatory basis regarding handicaps that may require accommodations or adjustments. Students, however, are not required to respond to such requests for information.

In requesting such information, the institution may emphasize that responses from persons who will require accommodations or adjustments will be necessary to ensure that accommodations or adjustments are made in a timely manner. Nonresponses to the institutional request for information will not have any negative impact upon the institution, aside from delaying the process of making programs and activities accessible in individual instances. Rather, nonresponse by the student will only hamper the individual in his or her educational pursuits if the student will in fact require institutional assistance.

The institution should view requests for such information as it views all other information requests of students that enable the institution to offer programs, activities, and services in a timely and effective manner.

Postadmission Requests for Medical Information: In individual instances, where there appears to be a substantial question about the relationship of a handicap to an accommodation requested, the institution may request that the individual student provide medical or other information that would resolve the question. If such information is not sufficient to satisfy institutional concerns, the institution may conduct its own medical examination to establish the relationship between handicap and accommodation.

Institutions are not permitted to request of handicapped students in a *blanket manner* medical evidence of handicap prior to taking actions required under section 504. Such requests must be *individual* and must result from the "substantial question" discussed above. An institution may not ask its handicapped students to provide medical evidence of handicap as a part of any general request for information, unless requests for medical information are made of *all* stu-

dents, handicapped and nonhandicapped.

Any information gathered in response to such institutional requests must be maintained in a confidential manner. As a part of all such requests, the institution should emphasize the confidentiality that medical information will be accorded and indicate that no such information will be used to discriminate on the basis of handicap.

23 So long as the institution provides *some* accessible seating for persons at all special events (e.g., football games, theater, lectures), need it provide any choice, or any reasonable selection of seating?

Position. Some accessible seating must exist for all such events. Ideally, a reasonable selection of seating would exist, also. However, in cases where little flexibility exists for the renovation of such sites, institutions should strive for access that will provide handicapped persons with seating that is located among the better viewing locations. If the only accessible seats are among the higher-priced seats, then the seats should be made available to handicapped persons using a rate based on the average price of all seats per performance.

Whenever possible, institutions should allow for the fact that handicapped persons have friends who are not handicapped with whom they would like to be seated at such events. Also, although it is not related to physical accessibility, institutions should make certain that persons who are hearing-impaired receive seating close enough for them to hear or speechread, and/or that interpreters are located in such a manner as to ensure simultaneous viewing by the hearing-impaired person of the interpreter and the event.

24 What options exist for institutions when their insurance carriers discriminate against students or employees with limited coverage, or increased cost, based on handicap? (For example, section 504 prohibits a standard insurance practice of excluding benefits for pre-existing conditions.)

Position. As the regulations are worded, the obligation is on the institution and not the insurance carrier to make certain that all benefit and insurance programs are free of discrimination based on handicap. The task force strongly urges HEW to acknowledge the inability of institutions in most cases to have any impact on policies or practices adopted by the insurance industry. If HEW has objectives related to eliminating discrimination based on handicap in all insurance programs, the task force recommends that HEW use its influence to secure the necessary changes and commitments from the insurance industry.

In the interim, institutions should do everything within their ability to renegotiate insurance and benefit programs to remove discriminatory provisions, or to find alternative providers of insurance and benefits programs that do not discriminate against handicapped persons. The option of self-insurance should also be explored in such instances.

Institutions should be certain that they are aware of all relevant legislation and regulations related to insurance, since some states, for example, are now adopting regulations prohibiting discrimination in insurance and benefits on the basis of blindness.

25 Is it possible to develop any national standards for determining, department by department, the essential elements of academic programs?

Position. The task force urges that national attention be focused on issues related to essential elements of academic programs. For example, HEW involvement in discussions of licensing requirements (with state agencies and professional and accrediting associations) would be beneficial.

Despite national attention and possible reform, however, determinations regarding essential program elements must be made locally, based on individual circumstances and the nature of the course, department, and degree program in question. It must be emphasized that no person may be excluded from any course, or any course of study, *solely* on the basis of handicap. When individuals are qualified to pursue certain endeavors, before or after accommodations or minor adjustments, they must be permitted to participate fully, consistent with their skills, abilities, and energies. In this regard, handicapped persons and their limitations should be viewed the same as nonhandicapped persons and their limitations.

Faculty members and academic administrators are urged to study essential elements of programs at their institutions and to ensure that decisions in this area do not unnecessarily restrict handicapped persons in their opportunities to pursue to the fullest their individual skills, aptitudes, and competencies.

A perception of limited employability for handicapped persons in a certain field, whether accurate or not, is *not* a valid reason for denying either admission or the pursuit of a particular study. Institutions are permitted under the regulations to inform handicapped applicants and students of restrictive licensing and other requirements in a specific field, but they are not permitted to limit opportunities as a result.

Blanket categorizations based on handicap, related to the abilities and skills of handicapped persons (or classes of handicapped persons) to perform effectively under certain circumstances, are strictly prohibited under section 504. Decisions in this regard must be made on an individual-by-individual basis, as they are made for nonhandicapped persons. Also, generalizations based on handicap related to the safety and security of the individual (and other persons) are not appropriate. It would be inappropriate to generalize, for example, that a person who has a certain handicap would be any more or less hazardous in a laboratory than a nonhandicapped person. In all cases, risks related to safety and security must be analyzed based on individual skills and the precautions that an individual takes, regardless of whether an individual is handicapped or nonhandicapped.

26 If one section of a particular course is made accessible to persons with mobility impairments, would it be discriminatory to require such persons to attend that section even if it is not being taught by the professor that he or she desires?

Position. To a large extent this must depend on individual circumstances that exist on a particular campus and within a particular department. In general, however, handicapped students, to the extent possible, should be provided with the same freedom of choice regarding course sections as nonhandicapped students. If students, in general, have no choice, then obviously handicapped students need not have any choice. But if students are presented with a choice regarding course sections on a first-come-first-served (or some other) basis, then every effort should be made to satisfy the individual preferences of persons with mobility impairments and persons who require an interpreter.

Common sense and flexibility should prevail in such matters. If, for example, a particular course has four sections and one deaf person enrolls for the course, and the deaf person expresses

an early desire for a particular section according to some institutional process whereby students express choice, then the interpreter should be assigned to the section chosen by the deaf person. If, on the other hand, four deaf persons enroll in this same course and each desires a different section, then the institution should not be obliged to provide four interpreters. It may leave the question of which section will have the interpreter up to the four deaf students to resolve, or find some other equitable means of resolution.

Institutions are reminded to avoid, *to the extent possible,* class scheduling that will result in the concentration of handicapped persons in the same classroom. Accessible classrooms and auxiliary aids will be required based on some proportion that takes into account the number of handicapped and nonhandicapped students in a particular course so that handicapped students may learn and study in as integrated a setting as possible. Obviously, there would be no need to make special scheduling provisions for handicapped persons who do not require any special or separate treatment.

27 Some institutions may have difficulty achieving program accessibility for persons with mobility impairments in the case of programs or activities that involve unique sites. Some coursework, for instance, may require hikes over rough terrain (e.g., archaeological digs), the use of expensive vehicles that cannot be made accessible (e.g., ocean vessels used in marine biology), or steep climbs up stairways that cannot be renovated (e.g., to the top of observatories). What special standards may an institution apply to unique cases such as these when it is apparent that program accessibility cannot be achieved in its purest sense?

Position. HEW has already acknowledged and addressed this question, to some extent, in Policy Interpretation No. 4 that appeared in the *Federal Register* of August 14, 1978. In that interpretation, carrying persons in wheelchairs is made permissible in limited instances providing that certain procedures are followed. Among the instances where carrying is permitted so long as the proper procedures are followed, as outlined in the Policy Interpretation, is that of "a university that has properly maintained that the structural changes and devices necessary to adapt its oceanographic vessel for use by mobility-impaired persons are prohibitively expensive or unavailable." It is assumed from this interpretation that carrying and/or other flexible approaches will be acceptable under section 504 where particularly unique conditions exist. Decisions in such cases should obviously be based on the skills, abilities and interests of the individuals involved, and not on arbitrary generalizations based on categories of handicap.

It should be noted that in some cases carrying and other flexible approaches may still not overcome particular obstacles to full participation.

(*Note:* This position does not address complicated issues related to the "essential elements" of programs and whether or not certain program requirements should, in individual instances, be substituted for or waived entirely.)

28 Is the institution's obligation to make auxiliary aids available to handicapped students in any way affected by the individual student's financial status and ability to pay for the aid himself or herself?

Position. As the regulation is currently written, no. In fact, the application of a needs test by a state voc/rehab agency could lead to ineligibility and an increased *institutional* obligation.

29 Should institutions develop and use a waiver form to protect the rights of faculty members when tape recorders are used as auxiliary aids in the classroom?

Position. Because the new copyright law already bestows copyright privileges on the lecturer even if the work is unpublished, such waivers should not be necessary. However, students using recorders should be informed that reproduction or any distribution of their recordings beyond their individual use, without the permission of the lecturer, is probably a copyright violation. Students should be aware that their right to copy in such limited instances is not accompanied by a., right to distribute materials.

30 What is the institution's obligation regarding discretionary requests for auxiliary aids on the part of students or employees? That is, if the institution provides readers, for instance, need it provide materials on tape also?

Position. The institution has an obligation to make auxiliary aids available that will be *effective* for the individual. There will be degrees of effectiveness for individual handicapped persons (braille versus readers, for example) *and* cost factors for the institution associated with different forms of aids. Decisions regarding relative effectiveness and cost should be made on an individual-by-individual basis. So long as an aid is *effective* in making a particular program or activity accessible to an individual, however, the institution will be fulfilling its obligation under section 504. (In employment situations, particularly, cost factors may be used in determining whether or not an accommodation is "reasonable" or an "undue hardship." In the employment context, however, the institution has a very clear interest in making certain that a particular auxiliary aid is effective, thereby making the employee more effective and productive.)

Institutions are reminded that different auxiliary aids may be better suited to a particular program or activity than others, and they should consult handicapped persons on questions of individual effectiveness. For example, where an interpreter and a notetaker may be necessary in a seminar to allow for active participation by a deaf person, a lecture may be made more easily accessible through provision of an interpreter and a typed text of the lecture. In some cases readers will be more effective for blind persons than taped texts, and vice versa.

31 What would be an appropriate definition or description of the term "personal use or study" as it is used related to auxiliary aids in subparagraph 84.44(d)(2) of the HEW regulations?

Position. It is the task force's judgment that the word "personal" in this phrase is intended to, or should, modify the word "study" in addition to the word "use."

The institution need *not* provide auxiliary aids for "personal" use or study, to include use or study of materials that are *not* specifically assigned as a part of, or otherwise directly related to, an academic program. Also, the institution need not provide auxiliary aids during periods when the library(ies) of the institution are not open. If an institution has either no library or exceptionally limited times when the library is open, then some reasonable schedule for the provision of aids should be developed in consultation with handicapped students. The use of aids need not be restricted to in-library use, however.

On a related issue, institutions that operate restrictive reserved reading programs should ensure that such programs are modified adequately to achieve access to such materials by all

handicapped persons. The same would be true of reading rooms and materials located within different departments of the institution.

32 What are the institution's responsibilities with regard to the provision of brailled or taped materials to blind students? How much lead-time is appropriate?

Position. Although the institution has a primary responsibility for making such aids available, it must be emphasized that institutional responsibility for producing brailled and taped materials is not primary unless and until existing sources are exhausted. As a standard procedure, institutions should be prepared to advise blind students of resources available for transcribing textbooks and other materials into braille or onto tape.

By referring blind students to appropriate community, state, and national organizations that offer such services on a regular basis, or maintain collections of such materials, the institution will in most cases be fulfilling its primary obligation to make such aids available. Using already existing library collections of braille and tape not only serves the institution by limiting its own financial commitments, but enlarges such collections for future use. Utilizing existing sources for such materials eliminates waste and duplication, ensures the quality of the aids, and familiarizes the blind student with existing channels and the procedures for obtaining braille and tape independently.

It is important for the students who need the materials transcribed to be fully involved and responsible for obtaining the necessary services on their own. Institutions, in fact, would assist in furthering the knowledge and experience of blind students by establishing procedures that involve acquisition of braille and tape by the individual.

Again, the primary institutional responsibility lies with making certain that such aids are *available*. This responsibility may carry with it the obligation to maintain a familiarity with existing sources and to refer blind students to them, as appropriate. But only after existing sources are exhausted need the institution be concerned with the *production* of such aids on their own.

The lead-time necessary to deliver aids effectively may vary from locale to locale. The most important consideration in this regard, in addition to making certain that lead-time does not compromise the "effectiveness" of service delivery, is being certain that all interested parties — teachers, librarians, and blind students — know precisely what the lead-time is. Full communication on this issue will minimize the disruption in academic programs.

33 What can be done to resolve the current impasse that exists related to the delivery of auxiliary aids to handicapped students by state vocational rehabilitation agencies, and the conflict existing on this issue between HEW's Rehabilitation Services Administration and Office for Civil Rights?

Position. A very serious barrier to the full and effective implementation of section 504 is HEW's failure to state clearly how federally financed rehabilitation programs should serve students in institutions of higher education. Although HEW is responsible both for setting rehabilitation services standards and for enforcing section 504, activities which should complement each other, it treats them as separate endeavors, and departmental policies in the two areas often conflict. Handicapped students thus suffer needless uncertainty, delay, and cost in securing assistance; institutions are required to finance services that could be provided more economically *and more effectively* by rehabilitation agencies; and the promise of rehabilitation service programs for many college and university students is largely unfulfilled.

The departmental agencies that should be responsible for remedying this situation have, at best, acquiesced. Accordingly, the NACUBO task force calls on the Secretary of HEW to take prompt and effective action to coordinate the programs of the Rehabilitation Services Administration and the Office for Civil Rights. The secretary has clear authority to take significant action with regard to major problems in this area, and for him to do so would be in the serious interest of handicapped students, institutions of higher education, and, from the task force's perception, the Department of Health, Education, and Welfare.

The central difficulty is simply that rehabilitation programs frequently refuse to provide "auxiliary aids" of the type called for in the department's section 504 regulation at 45 CFR 84.44(d). HEW's responsibility for this failure is especially clear in light of the following statement by HEW Secretary Califano in the appendix to the section 504 regulation:

> The Department emphasizes that recipients (institutions of higher education) can usually meet this (auxiliary aid) obligation by assisting students in using existing resources for auxiliary aids such as state vocational rehabilitation agencies and private charitable organizations. *Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by state and private agencies, not by colleges or universities.* (42 *Fed. Reg.* 22692-3; May 4, 1977; emphasis supplied.)

As RSA acknowledges, "the reference to State vocational rehabilitation agencies has apparently caused an expectation that the VR agency will form the major financial source for paying the cost of auxiliary aids." (Program Instruction RSA-PI-78-7, 12-15-77.) Yet this expectation has remained unfulfilled, substantially as a result of RSA policy, and OCR has apparently accepted that result.

The secretary evidently promulgated the auxiliary aid requirement based on an assumption that resources from his own department would be available at a certain level. They are not, and HEW's failure to rectify this situation leaves students, higher education administrators, and rehabilitation personnel alike unsure of the department's commitments to higher education for handicapped persons.

Federally financed rehabilitation programs are a major source of financial support for handicapped persons. Availability of such services can be determinative in successfully financing higher education for individual students; at the same time, state rehabilitation agencies often can provide auxiliary aids more economically, and from a basis of wider knowledge and expertise, than can thousands of individual educational institutions. Yet there now exists a situation wherein OCR, RSA and state rehabilitation agencies acquiesce in or actively promote the following barriers to service for handicapped students in higher education:

- Application of the "similar benefits" provision of section 101(a)(8) of the Rehabilitation Act to relieve rehabilitation agencies of *all* responsibility for students in higher education, on the grounds that section 504 makes institutions of higher education responsible for the "first dollar" of resources for them — despite the fact that section 101(a)(8) was enacted many years before section 504 and for purposes unrelated to it. Although Congress has never examined how these two provisions should properly be coordinated, this administrative policy presumes to effectively contradict Congress' intentions to expand educational opportunity through section 504.
- Application of "needs" tests in

rehabilitation programs that are not coordinated with student financial aid needs tests administered by institutions of higher education, or with the section 504 regulation's provisions concerning student financial aid.

○ Application of discretionary authority in the Rehabilitation Act to disfavor students in higher education as a class of rehabilitation services beneficiaries.

○ Application of discretionary authority in the Rehabilitation Act to disfavor graduate and post-baccalaureate professional students as a class of rehabilitation services beneficiaries, with particular adverse impact upon students who do not continue their post-baccalaureate education directly from undergraduate study.

○ A wide variety of differences in rules and levels of benefits among state rehabilitation agencies, particularly as to "portability" of rehabilitation benefits for study outside the provider state.

○ Application by some state rehabilitation agencies of low funding maximums which strongly favor the lower tuition costs of state colleges (for obvious state interests) to the degree that students are being discouraged financially from considering the alternative of independent education. In cases where a desired curriculum or degree for a particular field does not exist in a state college system, students may be financially forced into undesirable alternatives. No latitude exists within many state agencies for consideration of at least proportional funding for the higher costs of independent education.

These issues can be resolved in ways that assure handicapped students in institutions of higher education the most effective and economical support possible, without relieving their institutions of responsibility under section 504. This may be accomplished consistently with rehabilitation agencies' missions to provide services for rehabilitation rather than simply on the basis of handicap. But solutions will be developed only to the extent that the secretary exercises his authority and responsibility to explore them. OCR has circulated a draft Policy Interpretation (No. 7, December 1978) which touches on these problems but offers no solution; Interim Program Instruction RSA-PI-78-7 (December 15, 1977) defines a variety of issues from RSA's perspective but, similarly, offers no solution. The NACUBO task force believes that it is imperative that the secretary instruct these agencies to agree upon a single, clear, and effective departmental resolution to the problems outlined above.

Higher education institutions are dedicated to missions related to education; and state rehabilitation agencies are dedicated to missions related to rehabilitation. The task force urges the secretary to take action that will lead to a reflection of these principles in the policies and actions of his department. Section 504, by the secretary's own statement, was not intended to result in the establishment on every campus of new expertise in rehabilitation and new funds sufficient to support widespread rehabilitation efforts by colleges and universities. The task force feels that higher education will have met its obligations to handicapped students under section 504 to the extent that equal educational opportunity is provided and civil rights are carefully safeguarded. But the task force, and the institutions that it represents, feels very strongly that the role of rehabilitation should remain with rehabilitation specialists, and that the secretary's own initial interpretation of section 504 with regard to auxiliary aids should become departmental policy.

34 What are some of the factors to consider in arriving upon a "comparable selection" of housing units?

Position. The following factors are among those that may be considered in a "comparable selection" of campus housing:

○ campus location (with respect to distances and terrain relief to a variety of campus academic, recreational, and cultural facilities of different locations);

○ architecture (style and age);

○ size (size of rooms, building size, and high-rise versus low-rise);

○ residence programming (designations based on sex, class rank, study field, and so forth);

○ type of unit (single, double, suite, and so forth); and

○ types of programs within a residential facility (e.g., recreational, study aids).

35 Does the requirement related to comparable housing selections make it necessary for institutions to provide housing opportunities above the first floor for persons in wheelchairs? Some state and local laws prohibit such practices.

Position. The task force discussed this complicated question at great length, but decided against drafting a specific position when it was learned that the Office for Civil Rights is developing a Policy Interpretation on this issue. The task force would appreciate an opportunity to review draft OCR positions prior to issuance in final form. Also, the task force encourages the expeditious development and issuance of an OCR Policy Interpretation on this question, since many institutions need specific guidance in this area.

36 From the viewpoint of institutional liability, what special considerations exist, for the protection of the individual and others, with regard to handicapped students and employees?

Position. *Employees, Individual:* It would appear that section 504 (and section 503) requires the institution to hire and retain employees even in cases where the employment may be injurious or unhealthy to the individual employee. Accommodations and adjustments should be made to lessen the health hazards for the individual. And the institution may wish to have the employee sign waivers or consent forms and statements that the institution has fully informed him or her of the risks involved in the employment.

Employees, Others: Handicapped persons, per se, are not any more or less dangerous to others, in any setting, than nonhandicapped persons. The same standards of safety should be applied to individual handicapped persons, on a case-by-case basis, as are applied to nonhandicapped persons. Persons who have skills or energies that are limited to the point of creating hazards for others in the workplace should be restricted in their jobs, or not hired. This, however, applies to handicapped and nonhandicapped persons equally. Generalizations based on handicap regarding safety are not appropriate.

Students, Individual: The same general reasoning applies to individual students as applied, above, to individual employees. Accommodations and adjustments should be made to make any individual situation less hazardous. But, in general, the individual must be permitted under section 504 to participate fully in all programs and activities if he or she chooses. The institution may wish to have the individual student sign waivers or consent forms and statements that the institution has fully informed him or her of the risks involved in the participation.

Students, Others: The same general reasoning applies to student issues as applies to employee issues on the subject of the safety of others. Handi-

capped students, per se, are not any more or less dangerous to others, in any setting, than nonhandicapped students. The same standards of safety should be applied to individual handicapped persons, on a case-by-case basis, as are applied to nonhandicapped persons. Persons who have skills or energies that are limited to the point of creating hazards for others in the classroom should be restricted in their activity, or prohibited from the activity. This, however, applies to handicapped and nonhandicapped persons equally. Generalizations based on handicap regarding safety are not appropriate.

Student Athletes: Unique risks may exist in cases where certain classes of handicapped persons wish to participate in contact sports. In a Policy Interpretation issued by HEW on August 14, 1978, institutions are required, for example, to permit participation in contact sports by students who have lost an organ, limb, or appendage, but who are otherwise qualified. In such cases, according to HEW, the institution may require parental consent and approval from the doctor most familiar with the student's condition. As a result of this interpretation, institutions may be required to permit participation in contact sports by any person qualified to do so, based on skills and abilities, regardless of the risks to the person. In such cases, the institution should receive parental consent, as appropriate, and medical permission for participation. It may also wish to have the student athlete sign a waiver and/or statement acknowledging that the institution has fully informed him or her of the risk involved in such participation.

37 What special guidance can be provided to institutions that are financially troubled and have less flexibility for compliance with section 504 requirements, particularly smaller independent institutions?

Position. All institutions of higher education should achieve accessibility in programs and activities, regardless of the size or budget of the institution, the number of handicapped students or employees that will be served by changes, or the age of campus facilities. Institutions are encouraged to take full advantage of the flexibility that exists within the section 504 requirements and to exercise common sense and reasonableness in arriving upon effective approaches to section 504 compliance. In the cases of institutions with greater budgetary limitations, greater creativity may be required to develop accessible programs and activities in the absence of adequate resources.

Institutions are encouraged to remember that accessibility is a *process* and not a set of arbitrary requirements. To the extent that institutions develop and implement flexible and effective response mechanisms, they will make major progress toward meeting effectively the needs and requirements of handicapped persons for accessible programs, activities, and services.

The principle of program accessibility applies to all institutions, but the means for achieving program accessibility may vary greatly from one institution to another. For example, institutions that cannot meet required standards of program accessibility due to nonexistent resources (particularly smaller independent institutions) should compensate for their financial inabilities by becoming more flexible and creative in response to section 504.

However, it is clear that the absence of any "reasonable accommodation" and "undue hardship" standard in the provisions of Subpart E of the regulations means that, in some instances, institutions may be forced to implement programs that deviate somewhat from section 504 principles if total noncompliance, or program inaccessibility, is the only alternative. For instance, institutions with severe financial difficulties may find it necessary to adopt alternatives indefinitely that are only acceptable under the regulation in the short run. These might include the carrying of persons in wheelchairs beyond June 3, 1980; the use of alternate routes even if they are not normal pedestrian routes; greater relocation of activities and services than would otherwise be acceptable or desirable; and making fewer preparations in advance to cover every eventuality, but making certain that persons and procedures are responsive to individual needs.

The task force wishes to *emphasize strongly* that it does not advocate compromises in the goal of program accessibility. However, in cases where full compliance with HEW regulations is not possible, it is clear that the maximum program accessibility possible under the circumstances is the objective that should govern all actions.

It is the feeling of the task force that major changes can take place on every campus in the interest of achieving accessibility for handicapped persons in all programs and activities in U. S. higher education. Many of these do not require any major expenditure of limited institutional resources. *The achievement of such accessibility should be the principal objective, with "compliance" relegated to a secondary issue.*

This "do as much as you are able to" attitude expressed by the task force is in recognition of the serious difficulties that many colleges and universities are having in achieving full compliance with section 504 by the June 3, 1980 deadline for structural modifications. It is *in no way* intended to dilute the requirements of section 504. Also, quite obviously, no guidance or recommendation provided by the task force has the force of law or is able to lessen the legal obligations that institutions have under section 504.

This position, rather, reflects the feeling of the task force that handicapped students across the nation will benefit to a greater extent if institutions with no other alternatives do as much as they can, and HEW requirements are adjusted slightly to fit individual circumstances, instead of doing little or nothing because total compliance with all HEW standards cannot be attained.

The task force recommends a flexible, personal approach to accessibility for those institutions, particularly smaller independent colleges, that cannot achieve program accessibility in any other way due to limited financial resources. However, *it must be emphasized that such an approach, and certain measures recommended or mentioned in this position, may or may not be consistent with current HEW policy on section 504, and that any institution undertaking such an approach or such measures is doing so at its own discretion. The NACUBO task force has no authority to modify the law or its specific requirements, no capacity to defend institutions if charges are raised by HEW or in courts of law, and assumes no liability for the individual actions taken by institutions.*

Finally, it should be emphasized strongly that no reasonable handicapped person interested in his or her education or career has any desire to see institutions of higher education subjected to arbitrary undue hardship or, worse, forced to close their doors because of socially mandated programs. Flexible and creative approaches to the elimination of discrimination should be viewed favorably by all interested parties in cases where traditional actions cannot be taken due to nonexistent resources. Operating according to the spirit of section 504, and *documenting all efforts to achieve accessibility* to the maximum extent possible, is, the task force feels, a more desirable approach than total noncompliance because compliance with the current regulation is not possible. ♦